DOCUMENT RESUME

ED 257 923 UD 024 284

AUTHOR Roos, Peter D.
TITLE The Handicapped, Limited English Proficient Student: A School District's Obligation.
INSTITUTION Miami Univ., Coral Gables, Fla.
PUB DATE 84
NOTE 10p.; Prepared for dissemination by the National Origin Desegregation Assistance Center.
PUB TYPE Guides - Non-Classroom Use (055)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Bilingual Education Programs; *Compliance (Legal); Court Litigation; *Disabilities; *Educational Legislation; *Federal Legislation; *Limited English Speaking; Non English Speaking; Parent Rights; School Districts; *Student Placement; Student Rights

ABSTRACT

This paper, in a question and answer format, discusses a school district's obligation to handicapped, limited English Proficient (LEP) students, in relation to the following Federal laws and regulations: (1) the Education for All Handicapped Children Act (PL 94-142), (2) the Administrative Regulations of the Act; (3) Civil Rights Law 504 and the 504 Regulations; (4) Title VI of the 1964 Civil Rights Act; and (6) the Equal Education Act of 1974. First, it is pointed out that Federal law has priority over conflicting or less protective State law. Second, relationships among the above-listed authorities are outlined. Third, the local education agencies' obligation to locate handicapped LEP students is discussed. Fourth, the requirement that tests and evaluations of students for the purpose of placement be conducted in the students' primary language is made clear. Fifth, the emphasis of the law that placement teams should include persons fluent in the child's language and, in addition, that social and cultural background be evaluated is explained. Sixth, steps to be taken at the evaluation and placement stage to address the language of non-English speaking parents are indicated. Seventh, accomodations required for non-English speaking parents at placement meetings are articulated. Finally, it is explained that a program offered to a student must be altered to address the fact that he or she is limited English proficient. (RDN)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED257923

THE HANDICAPPED, LIMITED ENGLISH PROFICIENT STUDENT: A SCHOOL DISTRICT'S OBLIGATION

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
✓ This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

by

Peter D. Roos

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Rosa Castro Feinberg
Univ. of Miami, NCBAE
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Question 1: What laws should one refer to in order to determine a Local Educational Authority's (LEA) obligation to handicapped Limited English Proficient (LEP) children?

Answer: As a general rule, Federal Law is supreme and thus has priority over conflicting or less protective State Law. Under this rule, State Law which is as protective of the rights of handicapped LEP students, and which is more detailed in spelling out obligations which are left general by Federal Law should be the guiding force. If State Law is silent or less protective, reference must be had to the general principles of Federal Law which will be set forth below.

The relevant Federal Laws and Regulations which will be discussed are:

a) The Education of the Handicapped Act (The "Act") (94-142) which is codified at 20 USC 1400 et seq.;

b) The Administrative Regulations of the Act which are found at 34 CFR 300 et seq.;

c) The Civil Rights Law commonly referred to as "504" which is codified at 29 USC 794;

UD024284

d) The 504 Regulations, found at 34 CFR 104 et seq.;

e) Title VI of the 1964 Civil Rights Act, found at 42 USC 2000(d); and

f) The Equal Educational Act of 1974 codified at 20 USC 1703(f).

Each of the above Acts and Regulations should be available at a good public library and will definitely be available at most law libraries.

Question 2: How do all the above-listed authorities relate to each other?

Answer: As will be seen, PL 94-142 and its regulations provide the primary authority for issues of identification, evaluation, child find, and parental rights. This is because Congress and the Department of Education (ED) have quite specifically spelled out the obligations of LEAs.

To define a Free Appropriate Public Education (FAPE), one must also refer to laws specifically designed to protect national origin minority children who are LEPs - irrespective of their handicapping condition. Primary reference thus should be to those Acts (Title VI and 20 USC 1703(f)), as interpreted, to give meaning to the FAPE requirement.

Question 3: Must an LEA take special steps to locate handicapped LEP students as part of its "child-find" obligation?

Answer: Yes. Both PL 94-142 and the 504 Regulations mandate affirmative steps to "identify and locate" "all [handicapped] children". 20 USC 1414(a)(1)(A); see also 34 CFR 104.32(a) which mandates an LEA to "identify and locate every qualified handicapped person...who is not receiving a public education."

This obligation could not be met in any jurisdiction with a significant population of LEP students, unless activities (door to door canvassing, radio, newspapers, etc.) were undertaken in the predominent languages of the district. This principal has been affirmed in the one jurisdiction in which a Court has addressed it. Jose P. v. Ambach, 3 EHLR 551: 415 (E.D.N.Y., 1979).

Question 4: Must tests and evaluations of students for purpose of placement be conducted in the students primary language?

Answer: Yes, unless clearly not feasible. 94-142 is unambiguous on this point. A State must establish "(C) procedures to assure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate

educational program for a child." (Emphasis added.) 20 USC 1412(5)(c).

The Regulations made clear that this obligation to provide and administer evaluation materials and procedures in the child's native language is an obligation of both "State and local educational agencies". 34 CFR 300.532.

Given the extraordinarily strong language of this mandate and the manifest importance of native language evaluation to appropriate placement and evaluation, it is clear that a school district has a very heavy burden to establish lack of feasibility. Testing and evaluation should be by someone trained in assessment of linguistically and culturally different students, and who is fluent in the child's language.

Question 5: Should placement teams include persons who are fluent in the child's language?

Answer: The emphasis of the law is on the inclusion of a variety of persons who are skilled in interpreting the meanings of the evaluations; in addition, the regulations specifically mandate that "social and cultural" background be evaluated. 34 CFR 300.533(a)(1).

While proficiency in the child's language is not an express requirement at this stage, it seems clear that the law and regulations contemplate inclusion of the person or persons

who conducted the evaluations of the student. By the terms of the previous answer this person or persons must be fluent in the child's language. Further, the impact of the child's social and cultural background must be addressed by someone with expertise in relating that background to the decision to be made. Finally, as reflected in the next question, a parent must be a knowledgeable participant in the decision - a standard that expressly can not be met without a native language interpreter.

Question 6: What steps must be taken at the evaluation and placement stage to address the language needs of non-English speaking parents?

Answer: Parents are entitled to notice prior to evaluation or to any planned change in placement or decision not to change a placement. 20 USC 1415(b)(C); in addition, actual "consent" must be received from a parent before a preplacement evaluation or initial placement. 34 CFR 300.504(b)(c)(cc). By the express terms of the Act and Regulations, each of these activities must be altered to meet the needs of parents who are not fluent in English.

Notice of any planned evaluation or change of placement (or decision not to change placement) must "fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section." 20 USC 1415(b)(1)(D).

Further, before a "consent" to a pre-placement evaluation or initial special education placement can be given, "the parent [must be] fully informed of all information relevant to the activity for which consent is sought in his or her native language". 34 CFR 300.500(a).

Question 7: What accomodation must be made at the IEP meeting for the non-English speaking parent?

Answer: The 94-142 Regulations require that a school district "take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English". 34 CFR 300.345(e).

Thus, by the terms of this regulation, at a minimum, an interpreter must be made available to the parent. While translations of the IEP and other documents are not expressly mandated, it seems clear that the translator must be sufficiently knowledgeable about the substantive materials, evaluations, and proposed IEP to be able to convey their full import to the parent. This is necessary so that the parent can meaningfully give the imput envisioned, or, ultimately, determine whether to invoke alternative procedural safeguards.

Question 8: Must the program offered to the student be altered to address the fact that he is limited English proficient?

Answer: Absolutely. A student does not shed his rights to protection under other civil rights laws merely because he is handicapped. Thus, those rights held by a LEP student under Title VI of the 1964 Civil Rights Act (42 USC 2000(d)) and under the 1973 Equal Education Amendments (20 USC 1703(f)) must be honored.

The obligations of a school district under 1703(f) are to:

1. Develop a pedagogically sound program that addresses the child's English language needs;
2. Assure that his substantive educational progress is not hindered by his English language deficit and that the program is designed to assure that he ultimately bear no educational scars as a result of his lack of English language skills;
3. Provide all resources to assure success in the first two endeavors;
4. Assess the child regularly to substantiate the wisdom of the approach taken in the first two steps; and
5. To alter the program in a pedagogically sound manner, if the assessment reflects a lack of success.

These principles derive from a Court construction of 1703(f); see Casteñeda v. Pickard, 648 F. 2d 989 (5th Cir., 1981).

These principles argue in favor of the use of a bilingual approach, whenever possible, although the Court expressly said that for non-handicapped children, such was not compelled. One Court has adopted a bilingual approach for handicapped students. United Cerebral Palsy of N.Y. v. Board of Education, 79 C. 560 (Feb. 27, 1980). Certainly the legal and educational arguments for a bilingual approach are greater for certain handicapped students than for non-handicapped. Retarded LEP children, for example, would seem to have a compelling legal case for bilingual instruction, given their mental limitations. Students with most other handicaps would also have a more compelling case for bilingual instruction than could be made for their non-handicapped peers.

Realistically, it might be difficult, if not impossible, to find fully certified bilingual special education personnel for each language and disability in a school system. In such a case bilingual aides would seem to be compelled as well as a training program for the staff to assure that the IEP meets the above standards and can be effectively implemented. These standards must be woven into the IEP for the handicapped LEP child.

University of Miami
Coral Gables, Florida 33124
NATIONAL ORIGIN DESEGREGATION ASSISTANCE CENTER
School of Education
P.O. Box 248065 (305) 284-6501

January 9, 1984

TO: Clients and Colleagues

FROM: Rosa Castro Feinberg, Director RCF

RE: State and Local Educational Agency Obligations to Handicapped Students of Limited English Proficiency

The Lau Center has summarized a number of questions presented by school district representatives regarding programs of Special Education appropriate for limited English proficient (LEP) students. Our legal consultant, Peter D. Roos, Esq., has prepared the attached report in response to these questions.

Please feel free to distribute this information within your service area.

RCF:gp

Enclosure

A Private, Independent, International University An Equal Opportunity / Affirmative Action Employer